

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

Supreme Court No. 160150

v.

Court of Appeals No. 339668

ANTHONY OWEN,
Defendant-Appellee.

Ionia Circuit No. 15-31675-AR

Ionia District No. 15-1272 STA

_____ /

**BRIEF OF AMICUS CURIAE
PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN**

William Vaillencourt (P39115)
President
Prosecuting Attorneys Association of Michigan

Kym Worthy (P38875)
Wayne County Prosecuting Attorney

Jon Wojtala (P49474)
Chief of Appeals
Wayne County Prosecuting Attorney's Office

Adam M. Dreher (P79246)
Assistant Prosecutor
Wayne County Prosecuting Attorney's Office
Frank Murphy Hall of Justice
1441 St. Antoine St. #1204
Detroit, Michigan 48826
(313) 224-6027

and

Rhonda Haidar
Jordan Miller
Michelle Rollins
Legal Interns

Dated: July 20, 2020

TABLE OF CONTENTS

Index of Authorities	iii
Statement of Jurisdiction	iv
Question Presented	v
Interest of Amicus Curiae	vi
Introduction	1
Statement of Facts and Proceedings	3
Argument	11
I. The arresting deputy made an objectively reasonable mistake of law regarding the applicable speed limit that justified the traffic stop of the defendant’s vehicle.	11
A. The present stop did not violate the Fourth Amendment.	12
B. <i>Heien</i> does not require an ambiguous statute.	15
C. <i>Heien</i> requires the same deference given to an officer’s legal mistakes as factual mistakes.	17
D. Courts must review the underlying law and announce the state of the law for future cases.	19
Conclusion and Relief Requested	21

INDEX OF AUTHORITIES

Cases:

<i>Heien v North Carolina</i> , 574 US 54 (2014).	<i>passim</i>
<i>People v Dunbar</i> , 499 Mich 60 (2016).	11, 17
<i>People v Maggit</i> , 319 Mich App 675 (2017).	15
<i>United States v Rodriguez-Lopez</i> , 444 F3d 1020 (2006).	19

Statutes:

MCL 257.627.	14
--------------	----

STATEMENT OF JURISDICTION

The Prosecuting Attorneys Association of Michigan concurs that jurisdiction is proper.

QUESTION PRESENTED

- I. Did the arresting deputy make an objectively reasonable mistake of law regarding the applicable speed limit that justified the traffic stop of the defendant's vehicle?

Trial Court said: "No."

Circuit Court said: "Yes."

Court of Appeals said: "No."

Plaintiff-Appellant says: "Yes."

Defendant-Appellee says: "No."

Amicus Curiae says: "Yes."

INTEREST OF AMICUS CURIAE

In its mission to provide continuing education for every prosecutor and providing every prosecutor with the tools needed to do their jobs properly, the Prosecuting Attorneys Association of Michigan has interest in definitive guidance on handling issues of a police officer's legal mistakes in the context of the Fourth Amendment. Prosecutors are the gatekeepers in analyzing Fourth Amendment issues, and in training offices throughout the state, it can demonstrate that conviction integrity is not just a post-conviction idea.

INTRODUCTION

A matter of moments is all a sheriff's deputy with the Ionia County Sheriff's Office had to make a legal decision during the evening hours of September 5, 2015. In front of him was a vehicle travelling 43 miles per hour southbound on Parsonage Road within the Village of Saranac. His instant legal determination—that the speed limit on the road was 25 miles per hour—has produced nearly 5 years of litigation.

By all appearances, nothing indicated that the speed limit on Parsonage Road was anything other than the posted 25 miles per hour. Photographs of the location provide that the road does not even have lines painted on it. Rural homes spatter either side, and there's no shoulder on the road. Photographs of the scene were entered as exhibits at the evidentiary hearings:



The deputy made the quick determination that the vehicle was speeding and initiated a traffic stop. During his encounter with Anthony Owen, the deputy observed him to be intoxicated with a loaded handgun within the door of the vehicle. Owen was never cited for speeding.

At the trial court, after hearings to determine placement of the signage and whether a driver has notice of the speed limit, the issue of the stop was ultimately refined to determine whether MCL 257.627 modified a local speed ordinance enacted prior to the Legislature's adoption of 2006 PA 85.

Seemingly a matter of first impression, the trial court determined the local speed limit was modified by the Legislature's Act, and that the speed limit within the village was actually 55 miles per hour. The circuit court agreed, but overturned the dismissal based on a then-recent decision from the United States Supreme Court, *Heien v North Carolina*, 574 US 54 (2014). The Court of Appeals reversed, reasoning that the 10-year span since the legislative act removing the village-wide speed limit was too long for the officer's mistake to be considered reasonable.

Each court that has answered whether the stop is reasonable has approached *Heien* differently. Further, other cases touching on reasonable mistakes of law have shown different approaches by different panels of our Court of Appeals. The Prosecuting Attorneys Association of Michigan, as Amicus Curiae, would respectfully request this Court provide guidance to the lower courts on how to approach these issues, as the present case shows that guidance is needed.

STATEMENT OF FACTS AND PROCEEDINGS

In 2004, the Village of Saranac adopted, by reference, the Michigan Motor Vehicle Code as a local ordinance.¹ At that time, the director of Saranac's public works, Dennis Bowen, was responsible for maintaining the speed limit signs throughout the village.² Of the approximately 25 speed signs throughout the village, one is located on the northbound side of Parsonage Road facing drivers inbound to the village. All the signs face inbound traffic.

At the scene

On September 5, 2015, deputies with the Ionia County Sheriff's Department observed a vehicle traveling southbound (outbound) on Parsonage Road at 43 miles per hour. Deputy Derrick Madsen initiated a traffic stop because the vehicle was "within the village limits and that's very residential, sir."³ The officer believed the speed limit was 25 miles per hour. During the traffic stop, the officer determined that the driver, Anthony Owen, was intoxicated. A loaded firearm was also discovered in the driver's door of the vehicle. Ultimately, Owen was not cited for speeding. Instead, Owen was arrested and cited for operating while intoxicated and possession of a firearm while under the influence.

First Evidentiary Hearing

An initial hearing on Owen's motion to suppress was heard on October 21, 2015 in the 64A District Court, Hon. Raymond P. Voet. The district court ordered

¹ Evidentiary Hearing Transcript dated December 19, 2016, p 7.

² EHT 02/08/16, p 10.

³ Evidentiary Hearing Transcript dated February 8, 2016, p 7.

additional briefing, but originally believed the issue “boil[ed] down to whether the citizen’s [sic] had adequate notice of what the speed limit is.”⁴

The district court found:

I find that signs at the entry into the village are enough. To get out of the village, you gotta come into the village, and at that point, there is some responsibility on a driver to be aware as they come into a community—a residential area, as to what the speed limit is as they enter, and the village has posted them at the entry. So there’s where I’m going to hang my hat. I find that there is adequate signage in that regard.⁵

Owen then applied for leave to appeal in the circuit court.

The Eighth Circuit Court, Hon. David A. Hoort, ordered oral argument on the application for leave to appeal. Following argument, the court ordered “[i]n lieu of granting leave to appeal, the case is remanded to the trial court to conduct an evidentiary hearing to determine the speed limit for the area involved in the stop of defendant’s vehicle.”⁶

Second Evidentiary Hearing

Dennis Bowen first started with the village in 1982, and “they were in the middle of a program grant from the Department of Transportation, to update traffic control signs, and at that time, we did replace all the current speed limit signs.”⁷

Further testimony provided that the village’s records only date back to 1980.⁸ There

⁴ Motion to Suppress and Dismiss Transcript date October 21, 2015, p 46.

⁵ Continuation of Motion Transcript dated November 24, 2015, p 7.

⁶ *People v Owen*, unpublished order of the Eighth Circuit Court issued January 19, 2016 (Docket No. 15H31675AR).

⁷ EHT 02/08/16, p 10-11.

⁸ EHT 02/08/16, p 17.

is no record of when the village first established this speed limit throughout the village.

But Lt. Gary Megge, a trooper with the Michigan State Police, testified that contrary to the 25 miles per hour posted speed limit on Parsonage Road, it is actually 55 miles per hour. He testified:

The fact that there is or isn't a sign doesn't really mean anything to me. Um, when I look at the Michigan Vehicle Code section 627, 628 and 629 are the three sections in the vehicle code that establish speed limits, whether you're in a city, a county or state trunk line, or freeway. There are—there's mainly—there's three types of speed limits. One is a legislatively set, which is the 70 on the freeway, the 55 general speed limit. The other ones are modified speed limits. That's where I work with the road commissions and MDOT to establish something other than the statutory 50 or 70, and we do an engineering study. We do a speed study. We establish a traffic control order and we file that with the County Clerk and that gives that speed limit enforceability. The other way is ,what we call prima facie. They can be business districts, mobile home parks, subdivisions, access points, in or close to a park. Those can be set without really a traffic control order as I speak of them with MSP and MDOT or MSP and road commissions. But they are based—they're valid on their face essentially, because the vehicle code authorizes them. So in this section on Parsonage, the road itself is a half a mile long. I believe there are able 37 access points. So if you were to establish a speed limit based on 627, that speed limit would be 45. However, since those signs weren't posted and the 25's are not correct, the enforceable speed limit then falls back to 55 or the general speed limit.⁹

Lt. Megge testified that “[e]ach road should be or must be looked at individually to see what sections of the vehicle code, if any, it meets.”¹⁰

⁹ EHT 02/08/16, p 40-41.

¹⁰ EHT 02/08/16, p 43.

Importantly, Lt. Megge also clarified that “[m]ost police officers don’t have any idea where a traffic controller [sic] is, to be honest. It’s not their job. It’s my job, but the patrol officer, any sheriff’s department, any local police officer; they have absolutely nothing to do with establishing the speed limit. We simply enforce that.”¹¹

Presented with an issue of seemingly first impression, the district court found:

The Court is of the opinion, having listened to both sides, and looked at the law myself that this is a problem, and that it was not just prospective; that that was retroactive too. And even if it were to be just prospective only, the village still has that problem of there being no records. So even if you were to say yeah, okay, all the old laws are still in effect. There’s no record of what the old laws were and how they got there. That in it of itself is a huge problem, which I think undermines the Prosecutor’s persuasiveness in that regard. So I find that the uniform traffic code applies here, and that by default, the speed limit is 55.¹²

The circuit court had retained jurisdiction during this hearing, but on April 14, 2016 ordered a remand “back to the 64-A District Court for rehearing (or reconsideration) of Defendant’s Motion to Suppress & Dismiss.”¹³

Third Hearing at Trial Court

On May 11, 2016 there were no additional witnesses; the district court just heard argument. It found:

¹¹ EHT 02/08/16, p 51-52 (Although transcribed as “traffic controller” it is believed the testimony was “traffic control order”).

¹² EHT 02/08/16, p 59-60.

¹³ *People v Owen*, unpublished order of the Eighth Circuit Court issued April 14, 2016 (Docket No. 15H31675AR).

Now as it relates to the parties positions, the Prosecutor still disputes that the speed limit is 55. The Prosecutor still maintains the position that the Village of Saranac did not violate any laws by not following the procedure, as articulated by the witness from the Michigan State Police, as required in 2006. I guess that's an issue that can be resolved. We can—perhaps by a Higher Court. However, we can respectfully disagree upon it in the meantime. I find that the defendant was going 43 miles per hour in a 55 mile per hour zone. Then the question becomes—well, did the police officer have some good faith exception, under these circumstances; a reasonable belief to believe that the speed limit was 25, even though—as it turns out—because of a clerical breakdown by the village, the speed limit is not 25, and I don't like good faith exceptions under these types of circumstances. In my mind they can easily turn into a slippery slope. For example: The kind of stop where the police officer says "I didn't see a license plate." Then low and behold, when they stop the car, actually was a license plate taped in the window. It's a slippery slope for police officers. Police officers need to follow the law, like everyone else. I'm not finding that the deputy necessarily did anything in bad faith. The deputy was honestly enforcing the law, as he believed them to be under these circumstances. But I do find institutionally, that being the sheriffs department or any other law enforcement agency with jurisdiction in Saranac, which under these circumstances would be Michigan State Police. There is a need or requirement that the institution—the government have properly followed the rules in the establishment of speed limits. So there, I'm going to adopt the reasoning of the defense. I'm going to grant the motion to reconsider. I'm going to grant the motion to dismiss.¹⁴

The People filed an appeal of right to the Eighth Circuit Court.

Appellate Posture

The Circuit Court reversed the district court, reinstating the charges against Owen. Owen sought leave to appeal with the Court of Appeals; however, the

¹⁴ Motion to Suppress and Dismiss dated May 11, 2016, p 13-14.

interlocutory appeal was denied “for failure to persuade the Court of the need for immediate appellate review.”¹⁵ Back in the trial court, Owen entered a conditional plea of guilty to the offense of operating while visibly impaired and concealed pistol possession while intoxicated.¹⁶

Owen’s application for leave to appeal was denied in the circuit court, then the Court of Appeals denied leave to appeal “for lack of merit in the grounds presented.”¹⁷ Following Owen’s application for leave to appeal in this Court, this Court remanded “this case to the Court of Appeals for consideration as on leave granted.”¹⁸

The Court of Appeals Opinion

Reading MCL 257.627, at the time of the stop, the Court of Appeals reasoned:

If Saranac desired to modify the statutorily defined speed limits required under MCL 257.627, it had to follow the procedures set forth in MCL 257.627 and MCL 257.628 for lawful modification of speed limits. Any modification of the statutorily defined speed limits had to be a matter of public record under MCL 257.628(6), which required local authorities like villages to have a public record of traffic control orders that establish the legal and enforceable speed limit for the highway segment described in the document and any modification of the statutorily defined speed limits.¹⁹

As to whether the deputy’s traffic stop was reasonable, the court opined:

¹⁵ *People v Owen*, unpublished order of the Court of Appeals dated May 18, 2017 (Docket No. 337446).

¹⁶ *See* Plea and Sentence Transcript dated June 20, 2017.

¹⁷ *People v Owen*, unpublished order of the Court of Appeals dated January 30, 2018 (Docket No. 339668).

¹⁸ *People v Owen*, unpublished order of the Supreme Court dated September 12, 2018 (Docket No. 157380).

¹⁹ *People v Owen*, unpublished opinion per curiam of the Court of Appeals dated July 23, 2019 (Docket No. 339668) at 4-5.

At the time of the stop, Michigan’s Vehicle Code did not permit an officer to stop a vehicle on an unposted road for exceeding the speed limit based on a belief that the road had a 25-mile-per-hour speed limit. Nor could an officer reasonably infer from the Motor Vehicle Code that he could stop a vehicle on an unposted road for exceeding the speed limit based on such a belief. Under MCL 257.628(1), because the road had no posted speed limit sign, the speed limit was 55 miles per hour. A reasonably competent law enforcement officer should have known that.

...

The deputy in this case did not make a reasonable mistake of law because the Motor Vehicle Code since 2006 established the rule of law regarding speed limits throughout Michigan. Under the Motor Vehicle Code, unposted roads were 55 miles per hour. See MCL 257.628(1). The deputy’s testimony does not reflect a reasonable interpretation of the Motor Vehicle Code or even a plausible understanding of the applicable law. The record indicates that he never considered the Motor Vehicle Code at all. We conclude that the deputy did not have an objectively reasonable belief that probable cause existed to stop defendant because the totality of the circumstances established that he made an unreasonable mistake of law merely based on an unsupported hunch that the speed limit was 25 miles per hour because other roads were posted elsewhere in the village with that speed limit. However, since 2006, nearly 10 years before the traffic stop, the Motor Vehicle Code repealed blanket village-wide speed limits. The circuit court erred because it essentially held that a law enforcement officer’s unreasonable ignorance of the law was equivalent to a reasonable mistake of the law.²⁰

The People sought leave to appeal in this Court.

This Court ordered “appellant shall file a supplemental brief within 42 days of the date of this order addressing whether the arresting deputy made an objectively reasonable mistake of law regarding the applicable speed limit that

²⁰ *Owen*, unpub at 5, 6.

justified the traffic stop of the defendant’s vehicle.”²¹ Further that “the Prosecuting Attorneys Association of Michigan [is] invited to file briefs amicus curiae.”²² This brief follows.

²¹ *People v Owen*, unpublished order of the Supreme Court dated March 23, 2020 (Docket No. 160150).

²² *Id.*

ARGUMENT

I. **The arresting deputy made an objectively reasonable mistake of law regarding the applicable speed limit that justified the traffic stop of the defendant’s vehicle.**

Standard of Review

“In considering a trial court's ruling on a motion to suppress, we review its factual findings for clear error and its interpretation of the law de novo.”²³

Discussion

Under *Heien v North Carolina*, 574 US 54 (2014), “[r]easonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law.”²⁴ In *Heien*, the United States Supreme Court reviewed North Carolina’s assessment that the Fourth Amendment was not violated when an officer stopped an individual for travelling with one rear lamp though North Carolina required “rear lamps” to be functioning correctly. The Court held: “It was thus objectively reasonable for an officer in Sergeant Darisse's position to think that Heien's faulty right brake light was a violation of North Carolina law. And because the mistake of law was reasonable, there was reasonable suspicion justifying the stop.”²⁵

The legal application of “rear lamps” to one functioning light, and the legal application of “it is lawful to operate at a speed not exceeding” to travelling on Parsonage Road is similar. The only difference relates the where the statute is

²³ *People v Dunbar*, 499 Mich 60, 66; 879 NW2d 229 (2016) (citing *People v Tanner*, 496 Mich 199, 206; 853 NW2d 653 (2014)).

²⁴ *Heien v North Carolina*, 574 US 54, 61 (2014).

²⁵ *Heien* at 68.

applied. In *Heien* it is applied to a vehicle itself. In the present case, it is applied to the road. If prior to pulling Owen over the officer would have spent the same amount of time looking at the attributes of the road as the district court did, Owen would have been long gone. Instead, the deputy made a brief, investigatory stop. His initial legal conclusion of the speed limit on the road eventually proved incorrect, but his act of stopping Owen's vehicle was reasonable.

A. The present stop did not violate the Fourth Amendment.

The touchstone of the Fourth Amendment is reasonableness. There is no dispute that Owen was travelling 43 miles per hour. There is no dispute he was travelling on Parsonage Road within the Village of Saranac. There is no dispute that 25 miles per hour signs surround the entire village facing inbound traffic. There is no factual dispute about any characteristic of Parsonage Road. There are no factual disputes.

Instead, the legal dispute at the trial court was which law applies to Parsonage Road. The state's speed limit scheme lays out numerous conditions that outline which speed limit applies to which road, but it does not name each road and provide the road's speed limit. Instead, it leaves the application of the statute to the state's courts. Further, outside of even the prima facie speed limits, the state law requires a person to operate a vehicle only "at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the

traffic, surface, and width of the highway and of any other condition existing at the time.”²⁶ Again, more ambiguity.

More ambiguous still, the Village of Saranac had its own authority to establish speed limits within the village limits, at least at one point in time. The motor vehicle code from 1949 until 2006 allowed local communities to establish their own prima facie speed limits independent from any state guidance. Arguably that authority has now been returned, at least until January 1, 2024. But the Court of Appeals placed too much misguided emphasis on ‘village-wide’ speed limits being repealed nearly 10 years before the stop considering that the provision of the statute had never been reviewed by the courts. And even by the time courts analyzed the provision, the Legislature had noticed its mistake and amended it.

Ultimately, an objectively reasonable mistake of law is not strictly confined to the words within a statute. When looking at the “combination of an officer's understanding of the facts and his understanding of the relevant law” courts must also look to how the law is applied.²⁷ A mistake in the “A” portion of IRAC is just as important to a law student’s grade as a mistake in the “R” portion.

Here, the deputy’s application of Michigan’s speed limit scheme did not have the benefit of a prior court ruling, or even the benefit of having the time a court would to consider the issue. Instead, he had the time it takes a vehicle to accelerate to 43 miles per hour on a ½ mile stretch of road.

²⁶ MCL 257.627.

²⁷ *Heien*, p 61.

The *Heien* Court understood “just because mistakes of law cannot justify either the imposition or the avoidance of criminal liability, it does not follow that they cannot justify an investigatory stop.”²⁸ The defendant in *Heien* was not “appealing a brake-light ticket; he [was] appealing a cocaine-trafficking conviction as to which there is no asserted mistake of fact or law.”²⁹ Owen is similarly not appealing a speeding citation. Instead, his charges involved driving and possessing a firearm while intoxicated. No mistake of fact or law exists in Owen’s commission of these offenses.

The deputy’s mistake that the Legislature would have created a 55 miles-per-hour speed limit on an unpainted, unshouldered, rural-residential, village road required 5 months in the trial court to analyze correctly. Different law enforcement departments disagreed on the speed limit. At different times the same trial court sided with different advocates. At different times the same appellate courts sided with different advocates too. Even the Legislature has gone back and forth on the issue. This is hardly unambiguous.

Here, the deputy reasonably mistook 25 miles per hour signs facing every inbound village road as a 25 miles per hour prima facie speed limit within the village. As the district court noted, “To get out of the village, you gotta come into the village.”³⁰ The application of that law, although mistakenly applied, could not be

²⁸ *Heien* at 67.

²⁹ *Id.*

³⁰ CMT 11/24/2015, p 7.

used to impose liability on Mr. Owen for speeding. But it does not follow that it did not justify an investigatory stop.

Courts across the country have erred in their *Heien* analysis in three distinct ways. First, some courts have required an ambiguous statute before considering a *Heien* analysis. Second, some courts have failed to provide any deference to the officer's decision. Third, courts have failed to review the underlying law to prevent future mistakes. Sadly, the Court of Appeals in the present case erred in all three ways.

B. *Heien* does not require an ambiguous statute.

The Court of Appeals in the present case narrowly focused its analysis on how MCL 257.627 and 628 read at the time of the stop. In *People v Maggit*, the Court of Appeals acknowledged there is division on “whether the rule from *Heien* is limited to ambiguous statutes.”³¹ But the Court of Appeals's unpublished case law finds it leaning in the wrong direction. Instead of focusing on ‘statutes,’ courts should focus on the ‘law.’

In *Heien*, an ambiguity existed in a statute. The Court looked to other statutes to try to answer that ambiguity. But, ultimately, the Court's decision rested on North Carolina's determination of its state's law. Although there was an ambiguity in the reviewed statute in *Heien*, nothing in *Heien* suggests that a statutory ambiguity is required. Instead, courts are to look at an officer's “understanding of the relevant law.”³²

³¹ *People v Maggit*, 319 Mich App 675, 690 (2017).

³² *Heien*, p 68.

Michigan’s speed limit scheme—at the time—outlines generally which speed limit applies on which road by providing conditions that must be satisfied for the limit to be lowered. It provided:

(2) Except in those instances where a lower speed is specified in this chapter or the speed is unsafe under subsection (1), it is prima facie lawful for the operator of a vehicle to operate that vehicle at a speed not exceeding the following, except when this speed would be unsafe:

(a) 25 miles per hour on all highways in a business district.

(b) 25 miles per hour in public parks unless a different speed is fixed and duly posted.

(c) 25 miles per hour on all highways or parts of highways within the boundaries of land platted under the land division act . . . unless a different speed is fixed and posted.

(d) 25 miles per hour on a highway segment with 60 or more vehicular access points within ½ miles.

...

(3) It is prima facie unlawful for a person to exceed the speed limits prescribed in subsection (2), *except as provided in section 629*.³³

Section 629 created a “speed study obligation” on local communities to enact their own prima facie speed limits.

Though the words of the statute itself are unambiguous, applying it to every road within our state creates ambiguity. A road within the Village of Saranac is going to have different attributes than a road within the City of Detroit. Counting ‘vehicular access points’ at the instant of seeing a speeding vehicle would be an unreasonable burden to place on police. Forcing them to count access points

³³ 2012 PA 252 (emphasis added).

beforehand is burdensome too. To make matters worse, local communities—such as the Village of Saranac—can adopt their own prima facie speed limits.

The Court of Appeals’s opinion requires not only that every police officer within this state carry all the state’s law books within her patrol car, but also that she be able to apply that law within a span of time before a speeding vehicle can get away. This onerous obligation is not required by the Fourth Amendment to perform an investigative stop.

C. *Heien* requires the same deference given to an officer’s legal mistakes as factual mistakes.

The deputy’s ‘mistake’ here was not knowing whether the village had the authority to establish a prima facie speed limit. At the Court of Appeals, the People did not challenge the district court’s assessment of Saranac’s obligations in passing a village-wide speed limit.

But the one prerequisite to a ‘mistake of law’ analysis is first that a mistake of law occurred. As this Court noted in *People v Dunbar*, 499 Mich 60 (2016), if “we conclude that defendant violated [the statute], we necessarily also conclude that the officers did not make a mistake of law, reasonable or otherwise, and therefore *Heien* is not pertinent.”³⁴ The Court of Appeals determined:

If Saranac desired to modify the statutorily defined speed limits required under MCL 257.627, it had to follow the procedures set forth in MCL 257.627 and MCL 257.628 for lawful modification of speed limits. Any modification of the statutorily defined speed limits had to be a matter of public record under MCL 257.628(6), which required local authorities like villages to have a public record of traffic control orders that establish the legal and

³⁴ *People v Dunbar*, 499 Mich 60, 71 n 9 (2016).

enforceable speed limit for the highway segment described in the document and any modification of the statutorily defined speed limits.³⁵

After 2006, a ‘speed study’ was needed for local communities to “establish or increase” the local speed limit, but this ‘speed study obligation’ fails to mention already established speed limits.

The People conceded there was a mistake of law in this case. That mistake was whether the Legislature modified the local road’s speed limit. But like in *Heien*, this ‘speed study obligation’ “had never been previously construed by [Michigan]’s appellate courts.”³⁶ Interestingly, the Legislature contemporaneously changed the obligation just as Michigan’s courts were reviewing this question.

MCL 257.627 has been amended twice during the pendency of this case. A month before the Court of Appeals opinion in this case, the Legislature adopted 2019 PA 31, which shifted the ‘speed study obligation’ from local communities to the Michigan State Police. MCL 257.627 now reads that the speed limit is, “(e) Until January 1, 2024, 25 miles per hour on a highway segment that is part of the local street system . . . and that is within land that is zoned for residential use by the governing body of an incorporated city or village under the Michigan zoning enabling act The department of state police shall perform a speed study on a random sample of local streets set under this subdivision.”

³⁵ *People v Owen*, unpublished opinion per curiam of the Court of Appeals dated July 23, 2019 (Docket No. 339668) at 4-5.

³⁶ *Heien*, p 68.

If Owen were challenging a citation for speeding, he certainly would carry the day. The law—at the time—did not support that Owen violated the speeding statute. But the case’s posture is not whether Owen is legally responsible for speeding. The posture is whether the investigative stop was premised on an objectively reasonable mistake of law. For that, the district court should have provided the same deference to this mistaken legal scenario as it would have to a mistaken factual scenario.

D. Courts must review the underlying law and announce the state of the law for future cases.

In the instant case, the Court of Appeals failed to clarify the status of the law in question prior to determining the reasonableness of the mistake made by the officer at the time of the stop. Because case law outside of Michigan suggests the underlying law is not part of a *Heien* analysis, the People did not challenge Saranac’s ability to enact a prima facie speed limit at the Court of Appeals.

Guidance on requiring a court to determine the status of the law is imperative to law enforcement, prosecutors, and citizens alike. The benefit is not for the current case, but for future cases. Without clarification, an unscrupulous precedent is set to allow police to continue making the same mistake. Everyone benefits when mistakes are ended.

In her dissent of *Heien*, Justice Sotomayor identified that the Eighth Circuit Court of Appeals has decided that courts need not determine the underlying law prior to a reasonableness determination, which has resulted in confusion amongst law enforcement and citizens. In *United States v Rodriguez-Lopez*, 444 F3d 1020

(2006), the Eighth Circuit held that courts need not determine the status of the statute at hand but rather that the officer's belief that the statute was violated was objectively reasonable even where the statute was not in fact violated.

In *Rodriguez-Lopez*, the defendant was pulled over for violating an Iowa traffic law that required that drivers must use a turn signal prior to turning when other vehicles are near enough to be affected. The defendant failed to use his turn signal when turning ahead of a gravel truck. Officers ultimately found marijuana in the defendant's vehicle as a result of the stop. The defendant argued that the stop and subsequent search were constitutionally invalid because, since no other vehicle was affected by his turn, his failure to signal did not violate the relevant traffic law. The court identified that the traffic law violation fell on the interpretation of the word "affected." Rather, the court's focus was on whether the officer's belief the statute was violated was objectively reasonable and not on whether the statute was in fact violated.

The *Heien* Court did not provide a determination of what the underlying law was. But it was likely only because that would have been a matter of state law. North Carolina had made the determination of its own "rear lamps" statute. But just because the *Heien* Court did not determine North Carolina's "rear lamps" statute does not mean a state court can correctly analyze a *Heien* issue without first determining the state of the law.

CONCLUSION AND RELIEF REQUESTED

Heien v North Carolina outlined that the Fourth Amendment is not violated when an officer's reasonable suspicion is based on a reasonable mistake of law. Accordingly, the Prosecuting Attorneys Association of Michigan respectfully requests this Court hold the deputy's mistake of law was indeed reasonable. Further, it asks this Court to provide the desperately needed guidance to lower courts for applying *Heien* issues to legal mistakes during Fourth Amendment analyses.

Respectfully Submitted,

William Vaillencourt (P39115)
President
Prosecuting Attorneys Association of Michigan

Kym Worthy (P38875)
Wayne County Prosecuting Attorney

Jon Wojtala (P49474)
Chief of Appeals
Wayne County Prosecuting Attorney's Office



By: **Adam M. Dreher (P79246)**
Assistant Prosecutor
Wayne County Prosecuting Attorney's Office
Frank Murphy Hall of Justice
1441 St. Antoine St. #1204
Detroit, Michigan 48826
(313) 224-6027

and
Rhonda Haidar
Jordan Miller
Michelle Rollins
Legal Interns

Dated: July 20, 2020